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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Rulemaking To Amend Parts 1, 2,) CC Docket No. 92-297
21, and 25 Of the Commission's)
Rules to Redesignate The 27.5-)
29.5 GHz Frequency Band, To)
Reallocate the 29.5-30.0 GHz)
Frequency Band, To Establish Rules)
and Policies for Local Multipoint)
Distribution Service And for Fixed)
Satellite Services)

PETITION FOR RECONSIDERATION

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TABLE OF CONTENTS

SUMMARY	ii
I. INTRODUCTION	1
II. VERY SMALL BUSINESS CATEGORY AND BIDDING CREDITS	3
III. ELIMINATING INSTALLMENT PAYMENT PLANS	5
IV. LIMITING PREFERENCE ELIGIBILITY FOR LICENSEES THAT ARE DELINQUENT OR IN DEFAULT	11
V. CONCLUSION	13

SUMMARY

Cook Inlet Region, Inc. ("CIRI") urges the Commission to review certain of its decisions in the Local Multipoint Distribution Service ("LMDS") Second Report and Order in light of its experience gained in three years of auctioning spectrum. Circumstances have changed since the Commission last received comments on these matters in August and September, 1995, for which reason CIRI urges the Commission to reconsider its LMDS competitive bidding rules in three related areas.

First, the Commission should institute a "very small business" preference category for its auction of LMDS spectrum. The Commission employed a similar category for its broadband personal communications service ("PCS") and wireless communications service ("WCS") auctions, and certain LMDS services may be even more suitable for smaller businesses. As the Commission noted in the WCS context, a tiered bidding credit system is a substantial help to smaller bidders in a capital-intensive auction.

Second, CIRI urges the Commission to eliminate the availability of installment payment financing for LMDS licenses. Although installment payment financing was designed to help smaller businesses to attract capital, the Commission's experience in the broadband PCS C block context demonstrates the difficulties that arise when bidders are overextended. In the broadband PCS context, the Commission must now balance its obligation to manage the federal debt responsibly with its duty

to regulate the provision of service over the nation's airwaves. In the LMDS context, the Commission should return to the sole function of regulating of those airwaves. Thus, CIRI urges the Commission to replace installment payment financing for LMDS licenses with materially increased bidding credits for smaller bidders.

Finally, CIRI urges the Commission to establish that licensees who are delinquent or in default on any Commission installment payment obligations — and their affiliates and attributable investors — are ineligible for special benefits in the Commission's LMDS auction. Some licensees may use the Commission's installment payment rules as a money management system while securing additional government benefits in other auctions. Whether the Commission offers installment payment financing for LMDS or not, the Commission must make clear that competitive bidding preferences are limited to parties who responsibly manage their existing Commission debt.

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To: The Commission

PETITION FOR RECONSIDERATION

Cook Inlet Region, Inc. ("CIRI"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, submits this Petition for Reconsideration of the Commission's Second Report and Order¹ in the captioned proceeding, which was adopted on March 11, 1997, and released on March 13, 1997. The Commission's summary of the Second Report and Order was published in the Federal Register on April 29, 1997.²

I. INTRODUCTION

CIRI has long been an active supporter of responsibly managed government efforts to encourage minority and small business participation in the communications industry. Since the advent of the Commission's spectrum auction proceedings, CIRI has been a strong proponent of what became the Commission's

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1. FCC 97-82 ("Second Report and Order").
 2. 62 Fed. Reg. 23,148 (Apr. 29, 1997).

entrepreneurs' block rules. CIRI participated closely in the Commission's proceedings to develop the broadband personal communications service ("PCS") C block rules and then worked to defend those rules in the face of court challenges and judicial stays. Most recently, CIRI urged the Commission to increase opportunities for responsible small bidders in the remaining broadband PCS auctions,³ in the auction of Wireless Communications Service ("WCS") spectrum,⁴ and as part of the Commission's Part 1 auction rules.⁵

Against this background, CIRI urges the Commission to reconsider portions of the Second Report and Order in its proceeding to develop service and auction rules for Local Multipoint Distribution Service ("LMDS"). Although the Second Report and Order was released in March, 1997, the comments on the designated entity portions of its LMDS rules were submitted to the Commission in August and September, 1995.⁶ Since then, the Commission has learned a great deal about the administration of

3. Comments of Cook Inlet Region, Inc., WT Docket No. 96-59 (submitted Apr. 15, 1996); Reply Comments of Cook Inlet Region, Inc., WT Docket No. 96-59 (submitted Apr. 25, 1996).

4. Comments of Cook Inlet Region, Inc., GN Docket No. 96-228 (submitted Dec. 4, 1996).

5. Comments of Cook Inlet Region, Inc., WT Docket No. 97-82 (submitted Mar. 27, 1997); Reply Comments of Cook Inlet Region, Inc., WT Docket No. 97-82 (submitted Apr. 16, 1997).

6. See Rulemaking To Amend Parts 1, 2, 21, and 25 Of the Commission's Rules to Redesignate The 27.5-29.5 GHz Frequency Band, To Reallocate the 29.5-30.0 GHz Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service And for Fixed Satellite Services, Third Notice of Proposed Rulemaking, 11 FCC Rcd 53 (1995).

its competitive bidding programs in general and about a number of designated entity issues in particular. Circumstances have changed since the Commission last received comments on these matters, for which reason CIRI urges the Commission to reconsider its LMDS competitive bidding rules in three related areas.

First, CIRI urges the Commission to institute for LMDS a very small business preference category similar to that which it employed for its broadband PCS and WCS auctions. Second, CIRI urges the Commission to eliminate the availability of installment payment plans for LMDS licenses. Third, CIRI urges the Commission to make clear that licensees who are delinquent or in default on other Commission payment obligations shall be ineligible for any special benefits in the LMDS context. These three modifications will help the Commission to fulfill the mandate of Section 309(j) of the Communications Act with the benefit of experience gained in three years of auctioning spectrum.

II. VERY SMALL BUSINESS CATEGORY AND BIDDING CREDITS

First, CIRI urges the Commission to institute for LMDS a very small business preference category similar to that which it employed for its broadband PCS and WCS auctions. In the Second Report and Order the Commission notes that, like broadband PCS, "[s]ubstantial capital will be required to acquire and construct LMDS systems."⁷ In its broadband PCS D, E, and F Block Order, the Commission established a "very small business" preference

7. Second Report and Order at ¶ 348.

category for businesses with gross revenues not exceeding \$15 million to accommodate the needs of smaller bidders for licenses in that capital-intensive service.⁸ Earlier this year, the Commission utilized the "very small business" category for bidding credits in its WCS competitive bidding rules, reasoning that a tiered preference approach "enhances the discounting of bidding credits because not all entities receive the same benefit."⁹ CIRI urges the Commission to duplicate that approach here.

In particular, the rationale for a very small business preference category may be more compelling in the case of LMDS than it was in connection with broadband PCS or WCS. The services contemplated for LMDS systems are highly "scalable" because a licensee may build a system incrementally without compromising its ability to provide service to end-users. In the case of wireless local loop or video offerings, for example, a smaller system may stand on its own on a more localized basis without the need for immediate "total area" coverage or even national systems support. Broadband PCS, on the other hand, is much less scalable to the extent that customer demands and competitive pressures frequently dictate that a "full-coverage"

8. Amendment of Parts 20 and 24 of the Commission's Rules - Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, 11 FCC Rcd 7824, 7852 (1996).

9. Amendment of Commission's Rules to Establish Part 27, the Wireless Communications Service, Report and Order, FCC 97-50, ¶ 193 (rel. Feb. 19, 1997) ("WCS Order").

system is necessary to survive. LMDS, therefore, may provide even greater opportunities for smaller businesses than did broadband PCS.

For this reason, CIRI urges the Commission to add a "very small business" preference category to its LMDS competitive bidding program, employing the \$15 million gross revenues cap featured in Sections 24.720(b)(2) and 27.210(b)(2) of its Rules. In connection with eliminating the availability of installment payment plans for LMDS licenses (as discussed below), CIRI urges the Commission to adopt a tiered bidding credit approach of 35 percent for very small businesses, 25 percent for small business, and 15 percent for businesses with average gross revenues of more than \$40 million but not more than \$75 million. This tiered approach truly will encourage smaller businesses to participate in the provision of LMDS.

III. ELIMINATING INSTALLMENT PAYMENT PLANS

Second, CIRI urges the Commission to eliminate the availability of installment payment financing for LMDS licenses. Although CIRI generally has supported a full range of designated entity preferences for the Commission's spectrum auction process — and strict enforcement of the Rules applying thereto — the Commission should review its previous determinations in light of the experience gained in three years of auctioning spectrum. Indeed, in the Second Report and Order the Commission itself notes the similarities between LMDS and broadband PCS with regard

to the level of capital needed to participate.¹⁰ CIRI urges the Commission to examine closely the lessons learned in the broadband PCS context before offering installment payments for LMDS.

In its competitive bidding proceedings, the Commission established certain rules for the administration of installment payment obligations. Principal among these is that "[a] license granted to an eligible entity that elects installment payments shall be conditioned upon the full and timely performance of the licensee's payment obligations under the installment payment plan."¹¹ In that regard, the Commission recognized that strict enforcement of its payment rules is central to the sound administration of its spectrum auction program.

Even prior to its broadband PCS auctions, the Commission acknowledged that auction activity and installment payment obligations were closely linked:

Reducing or eliminating interest payments could result in very high bids, which could reduce competition and promote defaults among entrepreneurs. Such an approach

10. Second Report and Order at ¶ 348.

11. 47 C.F.R. § 1.2110(e)(4). See also Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Second Report and Order, 9 FCC Rcd 2348, 2391 (1994) ("An eligible designated entity that elects installment payments will have its license conditioned upon the full and timely performance of its payment obligations under the installment plan granted to the licensee"); Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fifth Report and Order, 9 FCC Rcd 5532, 5593 (1994) ("Timely payment of all installment payments will be a condition of the license grant").

could also encourage speculation instead of legitimate applicants who can attract capital.¹²

Thereafter, in a widely-reported speech to a wireless industry association during the broadband PCS C block auction, Chairman Hundt said:

I am also concerned about the level of bidding in the C block auction. I'm indifferent to the prices: people are bidding of their own free will. But I have heard that some bidders believe that the FCC will forgive the down payment due when the auction is over, and even may forgive the principle payments which begin six years later. In the event that anyone knows anyone who thinks such thoughts, I have some advice you can pass on to them: Forget about it. And what if there are defaults? We have long had plans to re-auction defaulted licenses right away.¹³

Similarly, immediately in the wake of the C block auction, then-Wireless Bureau Chief Michele C. Farquhar issued a statement reading, "Auctions are a market oriented process and defaults are a reality in the marketplace. We offer no guarantee of success, only the opportunity to compete."¹⁴

Notwithstanding these policies, the Commission recently has taken extraordinary measures to deal with licensees who claim that they cannot satisfy their broadband PCS C block installment payment obligations. On March 25, 1997, the Wireless Telecommunications Bureau released a Public Notice entitled

12. Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fifth Memorandum Opinion and Order, 10 FCC Rcd 403, 460 (1994) (emphasis added).

13. Reed E. Hundt, To Loop or Not To Loop: Is That the Question?, Speech to the Cellular Telecommunications Industry Association 3 (Mar. 26, 1996) (emphasis added).

14. News Release: Statement of Michele C. Farquhar, Chief, Wireless Telecommunications Bureau (May 17, 1996).

Reminder to Licenses [sic] with Installment Payment Plans:
Availability of Grace Periods,¹⁵ the principal purpose of which was to assist licensees in employing the grace period exception to the installment payment rules. Six days later, the Wireless Bureau suspended the payment deadline for all broadband PCS installment payment obligations,¹⁶ including those of licensees that had never asked for Commission relief. The Commission has not yet reinstated the installment payment obligations of any broadband PCS licensees, nor has it refunded any payments to licensees who were current on their obligations.¹⁷

15. DA 97-580. See also Public Notice: Wireless Telecommunications Bureau Staff Clarifies "Grace Period" Rule for IVDS "Auction" Licensees Paying by Installment Payments, 10 FCC Rcd 10724 (Wireless Tel. Bur. 1995).

16. Installment Payments for PCS Licenses, Order, DA 97-649 (rel. Mar. 31, 1997). Notably, one month later the Commission released its Report in the Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, in which it wrote:

[O]ur current rules already permit qualifying participants in the installment payment program to pay their installment payment within 90 days after its due date without any type of penalty. We also allow licensees to seek a three- to six-month grace period during which no installment payments need to be made. We believe these procedures give adequate latitude to businesses that require extra time to meet their obligations to the Commission and the government.

Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, Report, FCC 97-164, ¶ 151 (rel. May 8, 1997) (footnote omitted).

17. CIRI filed a Petition for Rulemaking on May 7, 1997, in which it urged the Commission to institute a rulemaking regarding the administration and disposition of competitive bidding installment payment obligations.

CIRI recognizes that the lack of access to capital frequently limits the ability of smaller businesses to compete with established telecommunications companies.¹⁸ The Commission's installment payment plans were designed to help to overcome that limitation. However, the availability of free credit (i.e., financing available without a determination of the debtor's credit-worthiness) fueled speculation in the broadband PCS designated entity auctions. The Commission and the Treasury Department must now administer substantial loans made to companies without a credit background, forcing the Commission to undertake administrative duties with which it has no experience.

For these reasons, CIRI urges the Commission to eliminate the availability of installment payment financing for LMDS licenses. The Commission may not have the resources effectively to assess the credit-worthiness of competitive bidding installment payment applicants, in which case the Commission is putting substantial federal funds at risk merely on faith. With increased bidding credits in lieu of installment payment plans, responsible small bidders with appropriately-tailored business plans will still be able to secure private market financing, and the Commission will be able to focus on regulating the provision of service, not collecting from overextended licensees. With installment payment plans, some bidders will always count on downstream relief from the agency that is pledged to ensure the continued provision of service to the public. In the broadband

18. Second Report and Order at ¶ 348.

PCS context, the Commission must now balance its obligation to manage the federal debt responsibly with its duty to regulate the provision of service over the nation's airwaves. In the LMDS context, the Commission should return to the sole function of regulating of those airwaves.

To help to ensure that smaller business truly have an opportunity to compete for LMDS licenses, CIRI urges the Commission to offer increased bidding credits in the place of installment payment financing. In its Part 1 Notice of Proposed Rule Making,¹⁹ the Commission wrote:

We note that substituting a system of larger bidding credits might eliminate the administrative and market concerns associated with installment payments, while nonetheless ensuring opportunities for small businesses to participate in auctions.²⁰

CIRI agrees that larger bidding credits will help smaller businesses to compete in the Commission's auctions without forcing the Commission to serve as both regulator and creditor. CIRI urges the Commission to follow this course in its auction of LMDS spectrum.

Specifically, the Commission should adopt market-effective bidding credits that will benefit small businesses in the LMDS auction. Very small business — as they are defined in Sections 24.720(b)(2) and 27.210(b)(2) of the Commission's Rules — should

19. Amendment of Part 1 of the Commission's Rules - Competitive Bidding Proceeding, Order, Memorandum Opinion and Order and Notice of Proposed Rule Making, FCC 97-60 (rel. Feb. 28, 1997).

20. Id. at ¶ 34.

receive a 35 percent bidding credit to lower the cost of their winning bids. Small businesses — as they are defined in Section 101.1112 of the Commission's Rules — should receive a 25 percent bidding credit and businesses with average gross revenues of more than \$40 million but not more than \$75 million should receive a 15 percent bidding credit.²¹ As the Commission wrote in the WCS rulemaking, "[t]hese levels reflect the thresholds used in the broadband PCS auction with a reasonable adjustment for the unavailability of installment payment plans for WCS licensees."²² To the extent that installment payment plans no longer represent sound small business policy, increased bidding credits such as these are one avenue through which the Commission may help smaller businesses to attract capital without sacrificing market-driven bidding discipline.

IV. LIMITING PREFERENCE ELIGIBILITY FOR LICENSEES THAT ARE DELINQUENT OR IN DEFAULT

Finally, CIRI urges the Commission to provide that licensees who are delinquent or in default on their installment payment obligations (and their affiliates and attributable investors) will not be permitted to receive special bidding preferences in the LMDS auction. If a licensee for another service has not made an installment payment on time or is in default on an installment payment obligation, that party should not simultaneously be offered the benefit of special bidding credits or other

21. Cf. 47 C.F.R. § 27.209.

22. WCS Order at ¶ 193.

government support in the LMDS context. The Commission must demonstrate that competitive bidding preferences will be limited to parties who in fact satisfy their obligations, regardless of the service to which those obligation apply.

This is particularly the case if the Commission does not offer installment payment plans for LMDS licenses. A smaller bidder who is prepared to pay for LMDS licenses in full after an auction should be required to dedicate those funds to the satisfaction of an existing Commission competitive bidding obligation before adding new licenses to its collection. This holds true even if the Commission continues to offer installment payment plans for LMDS. It would be nonsensical to offer new government financing to an entity that is not performing on an existing government loan. If the Commission's designated entity program is to survive, the Commission must make clear that its Rules and policies will be enforced in a variety of ways.

Accordingly, CIRI urges the Commission to require parties seeking a bidding credit in the LMDS auction — and, if offered, installment payment financing — to certify on their short-form applications that neither they nor their affiliates or attributable investors are delinquent or in default on any Commission competitive bidding installment payment obligation. For this purpose, the Commission could employ the definition of affiliate set forth in Section 101.1112(d) of its Rules and the definition of attributable interests set forth in Section 101.1003(e). The Commission could waive this eligibility

restriction in circumstances in which the public interest would be served, but bidders should not expect that delinquency or default exists as a money management system in one auction without consequence in another.

V. **CONCLUSION**

For these reasons, CIRI urges the Commission to include a very small business preference category in its LMDS auction program, to substitute increased bidding credits for installment payment plans, and to make clear that delinquency or default in one Commission payment plan will limit a party's eligibility for preferences in the LMDS auction.

Respectfully submitted,



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